

State of California
BOARD OF EQUALIZATION

TRANSACTIONS (SALES) AND USE TAX REGULATIONS

Regulation 1823. APPLICATION OF TRANSACTIONS (SALES) TAX AND USE TAX.

Reference: Sections 6008, 6009.1, 6203, 6352, 6385, 7202, 7203, 7261, 7262, 7263, Revenue and Taxation Code.

(a) TRANSACTIONS (SALES) TAX.

(1) **IN GENERAL.** Except as stated below, in any case in which state sales tax is applicable, state-administered transactions (sales) tax is also applicable, if the place of sale is in a district imposing such a tax. In any case in which state sales tax is inapplicable, state-administered transactions (sales) tax is also inapplicable. Thus, if title to the property sold passes to the purchaser at a point outside this state, state-administered transactions (sales) tax does not apply regardless of participation in the transaction by a California retailer. As explained in paragraph (b), the use tax may apply. If so and if the retailer is engaged in business in the taxing jurisdiction, he is required to collect the use tax and pay it to the board when the retailer ships or delivers the property sold into the district or participates within the district in making the sale. Additionally, on and after January 1, 1988, any retailer of vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code, is a retailer engaged in business in any district where a transactions (sales) and use tax is imposed and is required to collect the use tax from the purchaser and pay it to the board when the vehicle, aircraft or undocumented vessel is registered or licensed in that district.

Gross receipts from sales of tangible personal property subject to the transactions (sales) tax shall include delivery charges, when such charges are subject to the state sales or use tax.

(2) **EXCEPTIONS.** State-administered transactions (sales) tax does not apply to gross receipts from sales of tangible personal property:

(A) To certain operators of aircraft common carriers to be used or consumed directly and exclusively in the operation of such aircraft common carriers and principally outside the county of sale;

(B) To be used outside the district when the property sold is shipped to a point outside the district pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. If the purchaser uses the property in a district imposing transactions (sales) and use taxes, the use tax may apply;

(C) If the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of the ordinance imposing the transactions (sales) and use taxes; or

(D) Which are continuing sales of such property under a lease of such property, if the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of the ordinance imposing the transactions (sales) and use taxes.

(b) USE TAX.

(1) **IN GENERAL.** State-administered district use tax applies if tangible personal property is purchased from a retailer on or after the operative date of the district taxing ordinance and the property is purchased for use in the district and is actually used there, provided any one of the following conditions exist:

(A) Title to the property purchased passes to the purchaser at a point outside this state;

(B) The place of sale is in this state but not in a district having state-administered transactions (sales) and use taxes;

(C) The place of sale is in a district having state-administered transactions (sales) and use taxes and there is an exemption of the sale of the property from the transactions (sales) tax but there is no exemption of the use of the property from the use tax;

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(D) The property is purchased under a valid resale certificate; or

(E) The place of sale is in a district having state-administered transaction (sales) and use taxes, but at a rate lower than the rate (or combined rate) in effect in the district (or districts) in which the property is purchased for use and actually used. The person liable for the use tax is entitled to a credit against the use tax liability equal to but not exceeding the transactions (sales) tax or transactions tax reimbursement paid to a district or to a retailer in the district where the sale occurred. If the taxable use occurs in two or more districts whose boundaries are overlapping or coextensive, the amount of the credit shall be applied as follows: first, against the use tax liability imposed in the district having the earliest enacted state-administered transactions (sales) and use tax ordinance; second, against the use tax liability imposed in the district having the next earliest state-administered transactions (sales) and use tax ordinance; and so forth, until the amount of the credit is exhausted.

(2) EXCEPTIONS. State-administered district use tax does not apply to:

(A) The storing, keeping, retaining, processing, fabricating or manufacturing of tangible personal property for subsequent use solely outside the state or for subsequent use solely outside any district imposing a use tax;

(B) The storage, use or other consumption of tangible personal property, the gross receipts from the sale of which have been subject to a transactions (sales) tax by the district in which the tangible personal property is stored, used, or consumed;

(C) The storage, use or other consumption of tangible personal property by certain operators of aircraft common carriers;

(D) The storage, use or other consumption of tangible personal property if the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of the ordinance; or

(E) The possession of, or the exercise of any right or power over, tangible personal property under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of the ordinance.

(c) LEASES. When a lease is a continuing sale or a continuing purchase, the use tax, rather than the sales tax, applies unless the lease is to the United States or an agency or instrumentality thereof, insurance company, federally chartered bank exempt from direct state taxation by federal law (such as a federal reserve bank, or federal home loan bank),¹ or other lessee exempted from use tax, and the lessor is required to collect the use tax with respect to rentals collected while the property is in the district. If the lessee is exempted from use tax, the sales tax may apply. In the absence of evidence to the contrary, it shall be assumed that the use of the property by the lessee occurs in the taxing district in which the lessor delivers, or to which the lessor ships the property to the lessee.

If a lease is a continuing sale, or a continuing purchase, for the purposes of state tax, it shall be a continuing sale, or a continuing purchase, for the purposes of the transactions (sales) and use taxes. If a lease is neither a continuing sale nor a continuing purchase for the purposes of the state tax, it shall be neither a continuing sale nor a continuing purchase for the purposes of the transactions (sales) and use taxes.

If a person purchases property state tax paid prior to the operative date of the district transactions (sales) and use tax ordinance and after such date leases the property in substantially the same form as acquired, neither the transactions (sales) tax nor use tax of the district is applicable to the sales price of the property to the lessor or to the rentals.

(d) WHEN PROPERTY IS DEEMED OBLIGATED PURSUANT TO A CONTRACT OR LEASE. For the purposes of this regulation, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

¹ State banks and national banking associations are subject to sales and use taxes.

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History: Adopted January 6, 1970, effective February 25, 1970.

Amended March 9, 1970, effective March 10, 1970.

Amended December 12, 1973, effective January 18, 1974.

Amended April 9, 1980, effective June 19, 1980. In (c), deleted "bank" in the first sentence, added "federally chartered bank . . . home loan bank," and added footnote 1.

Amended June 26, 1985, effective September 19, 1985. Adds subdivision (b) (1) (E) which explains how the credit is to be applied if there is a difference in rates of tax and if the tax is imposed in areas where more than one district transactions (sales) and use tax is imposed. In subdivision (b) (2) (B), deletes the phrase "under any state-administered transactions (sales) and use tax ordinance" and adds the phrase "by the district in which the tangible personal property is stored, used, or consumed".

Amended March 30, 1988, effective June 16, 1988. Amended subdivisions (a) (1), (2) and (b) (2) to remove references to an exemption which expired on December 31, 1987. Amended subdivision (a) (1) to add provision which defines retailers of certain vehicles, aircraft and undocumented vessels as doing business in districts imposing a transactions tax if such vehicles, aircraft and undocumented vessels are registered or licensed in that district pursuant to AB 2446 (Chapter 308, Statutes of 1987).

Amended April 5, 1989, effective June 16, 1989. Amendments to regulation made to delete references to repealed sections of the Harbors and Navigation Code and replace them with references to the appropriate sections of the Vehicle Code.

Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.